

One-Year Delay in Electronic Health Care Transactions Standards

March 4, 2002

On December 27, 2001, President Bush signed into law H.R. 3323, the "Administrative Simplification Compliance Act," which revises the final compliance date for the Health Insurance Portability and Accountability Act (HIPAA) electronic health care transactions standards and code sets implementation, solidifies the April 14, 2003 privacy rule implementation date, and authorizes additional funding for the Department of Health and Human Services (HHS).

Request for One-Year Delay

Under the final electronic health care transactions rule authorized by HIPAA, each HIPAA-covered entity (healthcare provider, payer and claims clearinghouses) conducting electronic transactions originally faced an October 16, 2002 deadline to implement standard transaction formats. The new legislation delays the compliance date of the HIPAA electronic final transactions and code sets rule by one year, to October 16, 2003; **but only if** the covered entity submits a plan in writing to the Secretary of HHS by October 16, 2002 which explains why it cannot meet the 2002 deadline and outlines how it will meet the extended deadline. While there is no clarification available from HHS at this time, it is assumed that each HIPAA-covered entity in state government must submit a separate request for extension along with an accompanying compliance plan.

Compliance Plan Required

Specifically, the compliance plan must contain:

- An analysis reflecting the extent to which, and the reasons why, the entity is not in compliance;
- A budget, schedule, work plan, and implementation strategy for achieving compliance;
- An indication whether the entity plans to use or might use a contractor or other vendor to assist it in achieving compliance; and
- A timeframe for testing that begins not later than April 16, 2003.

Congress directed the Secretary of HHS to create a model form by March 31, 2002 that covered entities may use in drafting compliance plans and to allow electronic submission of the compliance plans. Congress appropriated \$44.2 million to HHS for HIPAA compliance activities, but mandated significant reductions in funding if HHS fails to timely complete the model form for compliance plans necessary to obtain the one-year delay in implementation of the electronic transactions standards. HHS would lose all \$44.2 million if it fails to promulgate the model form for compliance plans within 60 days of the March 31, 2002 deadline.

Increased Sanctions for HIPAA Non-Compliance

The Administrative Simplification Compliance Act also significantly raises the stakes for HIPAA non-compliance. Failure to either submit a compliance plan or be in compliance with the transaction standards by October 16, 2002 can result in exclusion from participating in the Medicare plan. The enforcement provision gives the HHS Secretary discretion to exclude a non-compliant entity from Medicare.

The change in sanctions is noteworthy because it creates a much more draconian penalty for noncompliance than that originally created by HIPAA. As originally enacted, the general penalty for a violation of the Administrative Simplification subpart of HIPAA was a monetary fine of only \$100 per violation and total fines for the same violation could not exceed \$25,000 per calendar year. HIPAA also stipulates that fines may not be imposed if the failure to comply was due to reasonable cause and the failure to comply is corrected within 30 days. Now, covered entities that fail to comply with HIPAA's transactions standards face a possible penalty in the form of exclusion from participation in Medicare.

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Projected Medicaid HIPAA Costs

Activity (Federal/State Match Percentages)	State	Federal	Total Cost
10.4 Translator Procurement & Implementation (75/25)	\$187,500	\$562,500	\$750,000
10.2 Consultant to develop Fiscal Agent RFP (90/10)	\$40,000	\$360,000	\$400,000
10.2 Point of Sale (POS) Upgrade (90/10)	\$100,000	\$900,000	\$1,000,000
10.5 HIPAA Related Medicaid Policy changes (50/50)	\$375,000	\$375,000	\$750,000
10.7 HIPAA Privacy/Security Officer (50/50)	\$115,000	\$115,000	\$230,000
10.3 State systems (ABC)changes (50/50)	\$400,000	\$400,000	\$800,000
10.3 State systems (TXIX)changes (90/10)	\$300,000	\$2,700,000	\$3,000,000
10.3 State systems (other Medicaid related) (50/50)	\$250,000	\$250,000	\$500,000
10.6 Interdepartmental HIPAA support (50/50)	\$150,000	\$150,000	\$300,000
10.11 HIPAA Communication/Project Manager (contractor) (70/30)	\$90,000	\$210,000	\$300,000
10.7 Privacy (50/50)	\$1,000,000	\$1,000,000	\$2,000,000
10.8 Security(non TXIX/MMIS systems) (50/50)	\$1,740,000	\$1,740,000	\$3,480,000
10.8 Security(TXIX/MMIS systems) (90/10)	\$232,000	\$2,088,000	\$2,320,000
10.2 Implementation of new MMIS (90/10)	\$2,650,000	\$23,850,000	\$26,500,000
Total Project Cost	\$7,629,500	\$34,700,500	\$42,330,000

HIPAA Compliance Deadlines		
HIPAA Rules For:	Final Rule Publication	Expected Date Compliance is Required*
Transactions and Code Sets	8/2000	10/2003**
Privacy	2/2001	4/2003
Security	Not final	Not final

* Standards are required to be implemented within 2 years of the effective date of the final rule.
(The effective date of the rule is 60 days after its final publication)

** Extensions of this deadline are being granted until October, 2003.